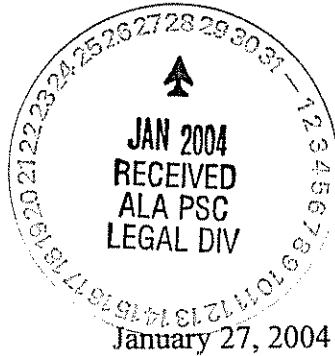




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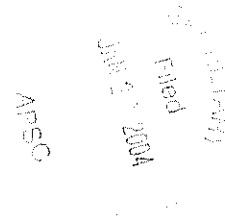
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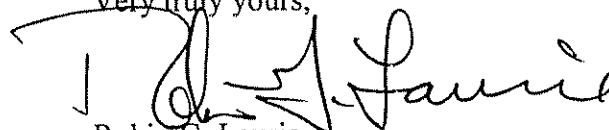


Re: Proposed Revisions to the Price Regulation and Local Competition Plan; Docket  
No. 28590

Dear Mr. Thomas:

Enclosed for filing are the original and ten copies of the Reply Comments of AT&T  
Communications of the South Central States LLC in the above-referenced matter.

Very truly yours,

  
Robin G. Laurie

RGL:dpe  
Enclosures

cc: Counsel of Record

**BEFORE THE  
ALABAMA PUBLIC SERVICE COMMISSION**

**In Re: Proposed Revisions to the    )  
Price Regulation and Local            )  
Competition Plan                        )**     **Docket No. 28590**

**REPLY COMMENTS OF AT&T**

Pursuant to the scheduling orders of the Alabama Public Service Commission ("APSC" or "Commission"), AT&T Communications of the South Central States, LLC ("AT&T") submits the following reply to the initial comments filed by BellSouth Telecommunications, Inc. ("BellSouth") and the Non-BellSouth ILECs<sup>1</sup> ("the Independents"). In addition to BellSouth and the Independents, initial comments were filed by the Attorney General of the State of Alabama, ITC^DeltaCom and MCI.

**INTRODUCTION**

At the outset AT&T expresses its general agreement with the initial comments submitted by ITC^DeltaCom and MCI. There are clear distinctions between incumbent local exchange companies (ILECs) and competitive local exchange carriers (CLECs). ILECs are the historical monopoly providers of local telecommunications services in Alabama and retain that status at the present time. They retain the overwhelming majority of local exchange customers and therefore, are the only practical source of exchange access services for interexchange carriers (IXCs). CLECs, on the other hand, come to the market without an established customer base, must make initial capital investments to serve end users and/or are dependent on the use of the incumbents'

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<sup>1</sup> The Non-BellSouth ILECs are identified in Exhibit "A" attached to their Initial Comments dated January 6, 2004. Although those Initial Comments were filed under Docket Nos. 24499, 24472, 24030 and 24865 rather than Docket No. 28590, AT&T assumes that they were intended to be responsive to the issues and Commission's Order in Docket No. 28590.

facilities in order to provide services to their end-users. The existing rules recognize these distinctions in the Commission's decision to treat new entrants differently in order to encourage the development of local exchange competition. For example, Section 19.02 of the Price Regulation and Local Competition Order<sup>2</sup> provides:

19.02 To create an environment in which fair and effective local competition flourishes, regulatory requirements for new entrants will initially be kept to a minimum in order to prevent unnecessary barriers to effective competition.

While State and federal legislation and the policies of this Commission have allowed for the development of competition, competitive inroads have not been able to loosen the ILECs' monopoly grip on the local exchange market.

BellSouth and the Independents refer to changes in the competitive landscape in support of their request for further relaxation of State regulatory rules. One major change in the competitive landscape is BellSouth's successful entry into the long distance market while maintaining its monopoly position in the local exchange market. This important change only serves to emphasize that current regulatory rules are adequate for BellSouth and the other ILECs and the need to continue the current regulatory regime regarding their operations. In addition, BellSouth's entry into the long distance market should mark the end of the era of overpriced intrastate access charges. The Commission needs to order the phase-down of intrastate access charges to cost-based levels as AT&T recommends in its Initial Comments.

The ILECs are seeking reduced regulation allegedly to enhance their ability to compete. The issue before this Commission, therefore, is not merely to examine the pace

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<sup>2</sup> Price Regulation and Local Competition Order, Docket Nos. 24499, 24472, 24030 and 24865, Sept. 20, 1995

of the development of local exchange competition in Alabama. The question the ILECs have placed before the Commission is what, if any, impact the existing rules are having on the ILECs' ability to compete in the local exchange market and based on that examination, determine if any changes are appropriate.

First, the ILECs' characterization of competition in the local exchange market is significantly overstated. The local exchange market in Alabama is not sufficiently competitive to warrant changes in existing ILEC regulatory rules. Second, the ILECs have made no attempt to show the current rules are hampering their ability to compete. Third, a precondition for any change in existing rules should be the reduction of intrastate access charges to cost-based levels.

AT&T agrees with the comments of the Attorney General, ITC^DeltaCom and the Non-BellSouth ILECs that workshops would be an appropriate forum to work through the issues. The scheduling of workshops would also allow the Commission time to finish its deliberations in connection with the FCC's Triennial Review Order, the outcome of which may have a bearing on the appropriate degree of regulation for BellSouth.

**I. The State of Local Exchange Competition in Alabama is Insufficient to Support Further Relaxation of ILEC Regulatory Rules.**

BellSouth and the Independents make reference in their initial comments to the development of local exchange competition during the eight years since the passage of the Telecommunications Act of 1996 as justification for relaxing regulatory rules. To the extent that competition for local exchange services has developed in Alabama, it is clearly insufficient to support further deregulation at this time. After eight years under

the current rules, the ILECs have succeeded in allowing CLECs only 5-10% of the market.<sup>3</sup> The relatively meager amount of competition that has occurred in Alabama primarily is the result of legislation and the orders of this Commission making UNE-P available to CLECs, not the benevolent actions of ILECs. To suggest, as BellSouth does, that the current rules have served their purpose and should now be discarded, is a simplistic and disingenuous view of the state of local exchange competition in Alabama.

Moreover, in addition to discarding existing ILEC regulatory rules, BellSouth would have the Commission eliminate the most economic and most used means of competitive entry – UNE-P. In Docket No. 29054 BellSouth has filed written testimony urging the Commission to eliminate local switching and UNE-P as a means of competitive entry at the very same time it wants to become free of most of the current regulatory constraints. Considering that wholesale discounts are totally insufficient to support a viable resale environment,<sup>4</sup> the successful elimination of UNE-P would result in the elimination of two of the three modes of market entry, leaving facilities-based entry as the only means available to CLECs. It is apparent that BellSouth's plan for further reduced regulation is just one step in a bold attempt to maintain its market dominance for local exchange services. The Commission should not permit this to happen.

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<sup>3</sup> See Comments of the Attorney General, Exhibit A, p. 6: "Moreover, BellSouth has an 89.70% share of the wireline connections provided to mass-market customers in its service territory."; Comments of ITC^DeltaCom, p. 6: "Specifically, the FCC's last competition report shows that CLECs collectively provided service to only ten (10) percent of the Alabama local market and 84% of those CLEC served lines were either UNEs or resale", source cited as Local Telephone Competition Report Tables 7 and 10 (released December 22, 2003 for period ending June 30, 2003; Initial Comments of AT&T, p. 4, citing a national study by the Consumer Federation of America "demonstrating that in Alabama, CLECs have achieved only a 5% share of the local residential market."

<sup>4</sup> Because the wholesale discounts are insufficient to produce adequate profit margins, the total number of resale lines has been steadily decreasing. See BellSouth Comments, p. 22.

In contrast to the slow development of local exchange competition, in just over one (1) year since being allowed in the long distance market, BellSouth – under current regulatory rules – has been able to acquire 3.4 million long distance customers, or nearly 25% of its residential customers and approximately 34% of its small business customers. The ILECs’ success in limiting the development of local exchange competition over the last eight years and BellSouth’s spectacular surge into the long distance market during its first year of eligibility clearly demonstrate that, at the very least, current rules should be maintained. At the current level of competition for local exchange services, market forces simply are insufficient to provide adequate discipline for ILEC pricing decisions. Current rules should remain in place to protect consumers and competitors from the ILEC’s potential abuse of their monopoly market power.

**II. BellSouth and the Independents Fail to Demonstrate the Need for Further Relaxation of the Regulatory Rules Applicable to ILECs.**

The ILECs’ comments are focused on the activities of their competitors. They do not address the fact that ILECs still maintain their monopoly position as the dominant providers of local exchange services in their service areas, their own market power or the need to keep that market power in check. BellSouth and the Independents simply fail to explain how the current regulatory regime is preventing them from effectively competing for local exchange customers or inhibiting their ability to offer competitive bundled services. Rather than addressing this most important question, the ILECs attempt to divert the attention of the Commission by commenting on the behavior of new entrants. For example, BellSouth contends that “all areas of the state are competitive” and that it is “unquestionable” that BellSouth “needs” regulatory flexibility to meet competitive

challenges.<sup>5</sup> There is no explanation, argument or even a single reference how the current rules prevent it from meeting the competitive challenges. Likewise, the Independents merely state that “recent events justify relaxation of the non-basic caps included in the Rural LEC and APSC Staff Plans and an elimination of the freeze on certain vertical services.”<sup>6</sup> Again, there is no explanation, argument or reference as to how current rules affect their ability to compete. Indeed, the Independents do not even tell us what the “recent events” are.

Contrary to the assertion of BellSouth, other commenters have raised serious question regarding the need to change the existing ILEC regulatory rules. In the absence of any evidence or argument that current rules are preventing the monopoly ILECs from competing in a developing local exchange market, the Commission should decline to make any changes at this time.

### **III. Intrastate Access Charges Should be Reduced to Cost Based Levels.**

One of the objectives of the existing Price Regulation and Local Competition Rules is to “create an environment in which fair and effective local competition flourishes.”<sup>7</sup> Given BellSouth’s entry into the long distance market and all ILECs unique role as the dominant providers of access services, the rules governing the pricing of access services, unless revised, will indeed hinder the attainment of that important Commission objective. CLECs that also provide long distance services must purchase access services from BellSouth and the other ILECs. Even if ILECs are required to set prices for their toll services at levels that cover the inflated price of access services,

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<sup>5</sup> BellSouth Comments, p. 27.

<sup>6</sup> Initial Comments of Non-BellSouth ILECs, p. 4.

<sup>7</sup> Price Regulation and Local Competition Order, Docket Nos. 24499, 24472, 24030 and 24865, Sept. 20, 1995, p. 3.

competitors will experience a significant competitive disadvantage. The competitive disadvantage results from the fact that the price of access is a true “cost” to the long distance companies, but not to the ILEC. As pointed out in AT&T’s Initial Comments, the ILEC “cost” of providing access service is substantially less than the price it charges. The difference between the ILEC “cost” and “price” represents pure profit for the ILEC, whereas it is a pure cost to the companies that purchase access services from the ILEC. Consequently, high access charges result in high margins for ILECs and razor thin margins for their competitors. This competitive disadvantage must be eliminated.

In its Comments, BellSouth points out that in the future competition will be coming from several sources and expresses the desire to be treated (regulated or perhaps deregulated) the same as other competitors:

“...wireline services must be seen and treated as simply one alternative of many communications service that compete with other alternative communications services, because in today’s marketplace, competition is coming from many different competitors.”<sup>8</sup>

Today, all competitors are not treated the same by BellSouth and the other ILECs. Today, interexchange carriers are required to pay exorbitant access charges for interexchange traffic, but CMRS providers are only required to pay cost-based local interconnection charges for calls within the Metropolitan Trading Area (MTA). Yet, there is no functional differences between access services and local interconnection services. If BellSouth truly believed its statement about being treated the same as other providers, it already would have reduced intrastate access to cost-based levels. In view of the ILECs’ historical refusal to reduce access charges on their own accord, this

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<sup>8</sup> BellSouth Comments, p. 32.



Commission should take the initiative to reduce rates to cost-based levels in three stages as outlined in AT&T's Initial Comments.

#### **IV. The Commission Should Refrain From Ruling on VoIP Issues in This Proceeding.**

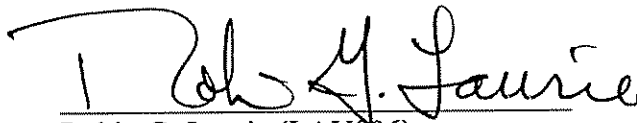
In their initial Comments, both BellSouth and the Independents urge the Commission to adopt local competition rules requiring the application of access charges to voice over internet protocol ("VoIP") services. In footnote 5 of its Comments, BellSouth requests the Commission to define "Communication Service" to include VoIP calls. At page 7 of its Comments, the Independents ask the Commission to declare VoIP traffic subject to access charges. As acknowledged by the Independents, the Commission's policy decision regarding the treatment of VoIP services is the subject of another Commission proceeding, *Petition for a Declaratory Order Regarding Classification of IP Telephony Service*, Docket No. 29016. The issues surrounding the appropriate treatment VoIP traffic have been fully briefed and the matter is ready for Commission decision. Moreover, the FCC conducted an open forum on VoIP issues in December 2003 and announced that it will soon issue a Notice of Proposed Rule Making on the treatment and classification of VoIP services. Consequently, the Commission should reject the requests of BellSouth and the Independents and refrain from making any decisions regarding VoIP services in this proceeding.

#### **CONCLUSION**

Regulation is a substitute for competition. Until competitive forces are vigorous enough to replace the need for regulation, current rules should remain in place. The present state of local exchange competition in Alabama has not developed to the point that would justify further relaxation of ILEC regulatory rules at this time. Furthermore,

the ILECs have failed to demonstrate any need for changing the rules governing their operations. There has been no showing of any kind that current rules are (1) inhibiting the ability of the ILECs to compete for local exchange service, or (2) having a negative impact on the development of local exchange competition in Alabama. An important condition for the consideration of any future relaxation of ILEC regulatory rules is the reduction of intrastate access charges to cost based levels. The Commission should take this opportunity to order a three-step phased decrease of access charges as proposed by AT&T in its Initial Comments.

Respectfully submitted this 27<sup>th</sup> day of January 2004.

A handwritten signature in cursive script, reading "Robin G. Laurie".

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the South Central States, LLC

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**CERTIFICATE OF SERVICE**

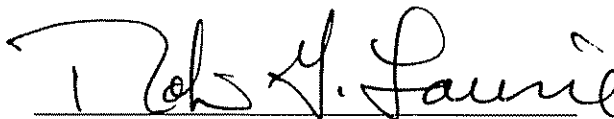
I hereby certify that a copy of the foregoing has been served upon the following  
by U.S. Mail, properly addressed and postage prepaid, on this the 27<sup>th</sup> day of January,  
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